

DEC 12 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****UNITED STATES OF AMERICA,****Plaintiff - Appellee,****v.****JESSIE DARIO RIOS,****Defendant - Appellant.****No. 04-17323****D.C. Nos. CV-04-06309-REC-03
CR-00-05322-REC****MEMORANDUM^{*}**

**Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Senior Judge, Presiding**

Submitted December 5, 2005 ^{}**

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Jessie Dario Rios appeals the district court's denial of his 28 U.S.C. § 2255 motion challenging the sentence imposed following his conviction on one count of armed bank robbery. We have jurisdiction pursuant to 28 U.S.C. § 2253.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rios contends that his Sixth Amendment rights were violated because his sentence was enhanced on the basis of several facts found by the District Court Judge by a preponderance of the evidence, that were neither charged in the indictment nor proven to a jury beyond a reasonable doubt. He contends that *Blakely v. Washington*, 542 U.S. 296 (2004), should be applied retroactively to cases on collateral review. Rios' request for retroactive application of *Blakely* is foreclosed by *United States v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005) (per curiam) (holding that neither *Blakely* nor *United States v. Booker*, 125 S. Ct. 738 (2005), applies retroactively to cases on collateral review).

AFFIRMED.